

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

ROBERT J. THOMAS, JR.,	)	
	)	
Movant,	)	
	)	
vs.	)	Case No. 22-0221-CV-W-GAF-P
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**MOTION TO REOPEN 28 U.S.C. § 2255 PROCEEDING AND MOTION FOR  
EXTENSION OF TIME TO FILE REPLY TO GOVERNMENT’S RESPONSE**

COMES Movant, Robert J. Thomas, Jr., (“Thomas”), appearing *pro se*, and files his Motion to Reopen 28 U.S.C. § 2255 Proceeding and Motion for Extension of Time to File Reply to Government’s Response, and would show as follows:

**I. Preliminary Statement**

As a preliminary matter, respectfully requests that this Court be mindful that *pro se* complaints are to be held “to less stringent standards than formal pleadings drafted by lawyers,” and should therefore be liberally construed. See *Childers v. Crow*, 1 F.4th 792 (10th Cir. 2021) *Childers v. Crow*, 1 F.4th 792 (10th Cir. 2021); *Estelle v. Gamble*, 429 U.S. 97 (1976) (same); and *Haines v. Kerner*, 404 U.S. 519 (1972) (same).

**II. Relevant Background**

On April 1, 2022, Thomas filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“§ 2255 Motion”). See CvDoc. 1.<sup>1</sup>

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<sup>1</sup> “CvDoc.” refers to the United States District Court for the Western District of Missouri, Western Division Docket Report in Civil No. 4:22-cv-00221-GAF, which is immediately followed by the Docket Entry Number.

On April 4, 2022, the Court issued an Order for the government to answer Movant's allegations and show cause on or before May 4, 2022, why the relief Movant seeks should not be granted. See CvDoc. 2.

On April 26, 2022, the government filed the twenty (20) page Government's Suggestions in Opposition to Movant's Motion under 28 U.S.C. § 2255 ("GO"). See CvDoc. 4. According to the government, in its certificate of service, served Thomas with the document. However, at the time of the alleged service, FCI Pollock was on lockdown, and he never received the GO.

On April 26, 2022, the Court issued a text Order on the Docket only that Movant file a reply to the Government's response (Doc. 4) by May 26, 2022. See CvDoc. 5. Most importantly, the Order also stated that **"This is a TEXT ONLY ENTRY. No document is attached."** It is essential to note that Thomas does not have access to Pacer at FCI Pollock. As such, there is no way that he had access to the above text Order. Further, at the time that the Order was entered, he was on lockdown at FCI Pollock.

On June 6, 2022, the Court issued an Order and the Clerk issued a Judgment dismissing without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for Movant's failure to comply with the Court's order. Movant is advised that any motion to reopen this case will be denied unless it is filed in a timely manner and accompanied by a reply to the Government's response. Movant also is advised that, although his claims are dismissed without prejudice, they are subject to the period of limitation set out in § 2255(f). See CvDocs. 6 & 7. It is essential to note that Thomas has just received the Court's Order and the Clerk's Judgment in the prison mail at FCI Pollock.

### **III. Reason to Reopen**

Dismissal of a § 2255 Motion is a drastic disposition under applicable legal standards. In this case, Thomas never received the GO from the government in the prison mail. At the time it was filed, FCI Pollock was locked down. He also never received notice from the Court in any document or any other way that he had to respond to the GO by May 26, 2022. Without notice of these events, there is no way that he could do so. FCI Pollock does not have access to Pacer. Had he received the GO, he would have written to the Court for an extension of time to reply to it because the compound was locked down and he did not have any access to the law library.

Thomas just recently this week received a copy of the Court's Order and Clerk's Judgment through the mail. He was able through an outside source, who has access to Pacer, to learn of the proceedings in this matter.

In the interest of fairness and fair notice of the proceedings, the Court should reopen his § 2255 proceeding. With regard to the reply to the GO, because he never received a copy of the GO, the government should serve him a copy of same. Further, because Thomas has limited access to the law library now, the Court should grant an extension of time to file his reply. Thomas seeks a thirty (30) day extension of time to file his reply from the date he is served a true and correct copy from the government of the GO. He suggests that the government send the GO via certified mail so that the Court will be aware of when he receives it.

WHEREFORE, premises considered and in light of the above relevant facts, Thomas prays that the Court reopen his § 2255 Motion and grant him a thirty (30) extension of time from the date he receives his copy of the GO to file his reply.

Respectfully submitted,



ROBERT J. THOMAS, JR.

Reg. No. 33580-045

FCI POLLOCK

FEDERAL CORR. INSTITUTION

P.O. BOX 4050

POLLOCK, LA 71467

**IV. Certificate of Service**

I hereby certify that on June 15, 2022, I sent via First Class U. S. Mail, a true and correct copy of the above and foregoing Motion to Reopen 28 U.S.C. § 2255 Proceeding and Motion for Extension of Time to File Reply to Government's Response to William A. Alford, III, Assistant United States Attorney at United States Attorney's Office, 400 East Ninth Street, Suite 5510, Kansas City, Missouri 64106.



ROBERT J. THOMAS, JR.



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**TO:**

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